

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GLENN QUANTZ,

Plaintiff,

v.

GARY EDWARDS, NEIL McCLANAHAN,
RAY HANSEN, DAN KIMBALL, BRAD
WATKINS, PAUL COUNTS, THURSTON
COUNTY, WILLIAM "BILL" KENNY and
DEFENDANT DOES 1 through 5,

Defendants.

Case No. C04-5737RJB

ORDER GRANTING
DEFENDANTS' MOTION TO
COMPEL PLAINTIFF TO
SUBMIT TO MENTAL
EXAMINATION PURSUANT TO
FED. R. CIV. P. 35(a)

This matter comes before the court on Defendants' Motion to Compel Plaintiff to Submit to a Mental Examination Pursuant to Fed. R. Civ. P. 35(a) (Dkt. 64). The court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

This is a case brought against Thurston County, William Kenny, and six other individual defendants (the TCSO defendants). In his amended complaint, Mr. Quantz states claims for violations of his state and federal constitutional rights, wrongful discharge, and defamation. Dkt. 44. Defendant William Kenny counterclaims for violation of 42. U.S.C. § 1983. Dkt. 60. Mr. Quantz alleges that he has suffered "anxiety, trauma, stress, emotional distress [and] embarrassment." Dkt. 44 at 6.

1 The TCSO defendants have retained Dr. Russell Vandenberg to provide expert testimony
2 about the plaintiff's alleged emotional distress and request that Mr. Quantz undergo a mental
3 examination by Dr. Vandenberg. The parties discussed this request in a Local Rule CR 37(a)(2)(A)
4 conference on September 30, 2005. On October 3, 2005, the TCSO defendants received a letter
5 from the plaintiff dated September 30, 2005, in which he agreed to appear for a mental
6 examination pursuant to Federal Rule 35 subject to certain conditions.

7 Counsel for the plaintiff filed a Notice of Absence indicating his absence from the office
8 from September 23 to October 7, and the deadline for discovery motions in this case was October
9 4. Dkt. 46.

10 Counsel for the TCSO defendants filed this motion to compel the plaintiff to submit to a
11 mental examination in order to comply with the deadline for discovery motions but are hopeful
12 that the parties may still be able to resolve this issue on their own. The plaintiff opposes this
13 motion, contending that he is willing to undergo a medical examination so long as the TCSO
14 defendants' examiner does not seek to embarrass or antagonize the plaintiff and does not inquire
15 into the facts pertaining to liability. Dkt. 78 at 2. The reply does not address the plaintiff's
16 condition that Dr. Vandenberg be prohibited from asking questions pertaining to liability but
17 contends that "inquiry into any potential source of anxiety, trauma, stress, emotional distress, or
18 embarrassment" is relevant to determining the plaintiff's mental state. Dkt. 79.

19 II. DISCUSSION

20 Federal Rule 26(a)(5) permits parties to obtain discovery by mental examinations. Federal
21 Rule 35(a) allows parties to move the court to order such an examination:

22 When the mental or physical condition . . . of a party . . . is in controversy, the court in
23 which the action is pending may order the party to submit to a physical or mental
24 examination by a suitably licensed or certified examiner The order may be made only
25 on motion for good cause shown and upon notice to the person to be examined and to all
parties and shall specify the time, place, manner, conditions, and scope of the examination
and the person or persons by whom it is to be made.

26 The moving party must therefore meet five criteria: (1) the mental condition of a party must be in
27 controversy; (2) the proffered examiner must be suitably licensed or certified; (3) there must be
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1 good cause shown; (4) all parties and the person to be examined must receive notice; and (5) the
2 order must specify the examiner and the time, place, manner, conditions, and scope of the
3 examination.

4 **A. MENTAL CONDITION IN CONTROVERSY**

5 The TCSO defendants contend that the plaintiff's mental condition is in controversy
6 because he claims to be suffering from emotional distress. Dkt. 64 at 2. The plaintiff does not
7 appear to contest that his mental state is in controversy, and the court should find that this
8 element is satisfied.

9 **B. SUITABLY LICENSED OR CERTIFIED EXAMINER**

10 The motion and response fail to address this prong of the analysis. There are numerous
11 references to Dr. Vandenberg in the motion, but there is no assertion that he is licensed or certified
12 to conduct medical examinations. Dr. Vandenberg's declaration, filed in support of the defendants'
13 reply, demonstrates that Dr. Vandenberg is a licensed physician and psychiatrist. Dkt. 80.

14 The motion also contends that the plaintiff has attempted to "unduly restrict Ms. Feldman-
15 Summers' [sic] examination," but the motion, response, reply, and accompanying declarations do
16 not explain who Ms. Feldman-Summers is or whether she is licensed or certified. The court
17 should therefore find that this element is satisfied insofar as the TCSO defendants seek to have the
18 plaintiff examined only by Dr. Vandenberg.

19 **C. GOOD CAUSE**

20 The TCSO defendants contend that there is good cause to order Mr. Quantz to undergo a
21 mental examination by Dr. Vandenberg because the plaintiff is claiming to be suffering from
22 emotional distress and because it appears likely that the plaintiff will undergo a medical
23 examination by an examiner of his choosing. Dkt. 64 at 6. The plaintiff does not contest that the
24 defendants have shown good cause and appears willing to undergo a mental examination by Dr.
25 Vandenberg subject to certain limitations.

26 **D. NOTICE**

1 Federal Rule 35(a) requires that all of the parties and the person to be examined must be
2 given notice before the court may order a mental examination. As a party to the case, Mr. Quantz
3 has received notice of this motion, and his attorney has conferred with counsel for the TCSO
4 defendants regarding the requested medical examination. The court should therefore find that this
5 element is satisfied.

6 **E. DETAILS OF EXAMINATION**

7 The final requirement of Federal Rule 35(a) is that the order ordering a person to submit
8 to a medical examination “shall specify the time, place, manner, conditions, and scope of the
9 examination and the person or persons by whom it is to be made.” The defendants’ proposed
10 order does not specify a time when the mental examination will occur, if ordered. With respect to
11 the manner and conditions of the examination, the defendants propose that the examination last
12 six hours; that the plaintiff be permitted to have one, nondisruptive observer; that the examination
13 be audiotaped and that copies of the recording be provided to all counsel upon payment of a
14 reproduction fee; that no other recording be permitted; and that Dr. Vandenberg prepare a report
15 to be used only for trial and trial preparation and not to be disseminated to any other person at
16 any time for any reason. Dkt. 64-2. With respect to the scope of the examination, the defendants
17 propose that the examination inquire only into the plaintiff’s mental health and alleged emotional,
18 mental, and psychological damage. *Id.*

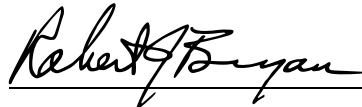
19 The plaintiff urges the court to deny the defendants’ motion outright and therefore does
20 not explicitly propose a time when the examination may occur. *See* Dkt. 78-2. The plaintiff does
21 contend that the examination should be limited to a history and clinical exam and that Dr.
22 Vandenberg should be required to notify Mr. Quantz and secure his prior consent to any tests to
23 be performed. The defendants do not appear to contest this requirement, and Dr. Vandenberg’s
24 declaration suggests that he is willing and able to disclose any tests to the plaintiff beforehand.
25 Dkt. 80. The plaintiff also reiterates two conditions he sought to impose before this motion was
26 filed:

27 First, he requests that Dr. Vandenberg be prohibited from seeking to embarrass or
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1 plaintiff.

2 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
3 to any party appearing *pro se* at said party's last known address.

4 DATED this 31st day of October, 2005.

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7 Robert J. Bryan

8 U.S. District Judge
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